

# Recoupment Revenues for Indigent Defense

## *Trends & Issues*

Joint Legislative Oversight Committee on  
Justice & Public Safety

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Office of Indigent Defense Services

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# IDS Recoupment Revenues

- ▶ Budgeted at \$13 Million for current year
- ▶ FY 13 Actual \$13 Million
- ▶ Projected FY14 Actual \$12.8 Million

# Legal Basis and Restrictions on Recoupment—Criminal Cases

## ► G.S. 7A-455

*“In all cases the court shall direct that a judgment be entered in the office of the clerk of superior court for the money value of services rendered by assigned counsel, the public defender, or the appellate defender, plus any sums allowed for other necessary expenses of representing the indigent person” (unless ordered through probation)*

## ► G.S. 7A-455.1

- *Appointment Fee (\$50 from 2002-2010 then to \$60)  
\$5 of which goes to AOC Technology Fund*

# Affidavit of Indigency – AOC-CR-226

- ▶ A court-appointed lawyer is not free. If you are convicted or plead guilty or no contest, you may be required to repay the cost of your lawyer as a part of your sentence. The Court may also enter a civil judgment against you, which will accrue interest at the legal rate set out in G.S. 24-1 from the date of the entry of judgment. Your North Carolina Tax Refund may be taken to pay for the cost of your court-appointed lawyer. In addition, if you are convicted or plead guilty or no contest, the Court must charge you an attorney appointment fee and may enter this fee as a civil judgment against you pursuant to G.S. 7A-455.1.

# Constitutional Standards

- ▶ NC recoupment statutes have been found to generally meet constitutional standards established by the U.S. Supreme Court in *Fuller v. Oregon*, 417 U.S. 40 (1974):
  - ▶ right to counsel without cumbersome obstacles
  - ▶ notice and a meaningful opportunity to be heard
  - ▶ not be exposed to more severe collection practices than an ordinary civil debtor
  - ▶ cannot be imprisoned for failing to pay due to indigency
  - ▶ Court must take cognizance of the person's resources and other financial demands

# Types of Cases

- Criminal Cases—judgment automatic unless Judge opts out based on specific findings
- Juvenile Delinquency—discretionary with Judge to hold adult party responsible, needs to be specific finding
- Abuse/Neglect/Dependency—discretionary with Judge to hold parties responsible, needs to be specific finding

# Recoupment by Attorney Type

- For court appointed attorneys, fee application is both their invoice and document used to set recoupment and docket judgment
- For Public Defenders, Judge assigns fees for recoupment purposes only and PD offices use fee application forms to submit to Clerk for recoupment
- For Contractors, IDS online contract system produces a form to be submitted to Clerk for recoupment purposes based on hours worked
- Regardless of service provider, defendant is entitled to notice and opportunity to be heard

# Sources (FY13 Data)

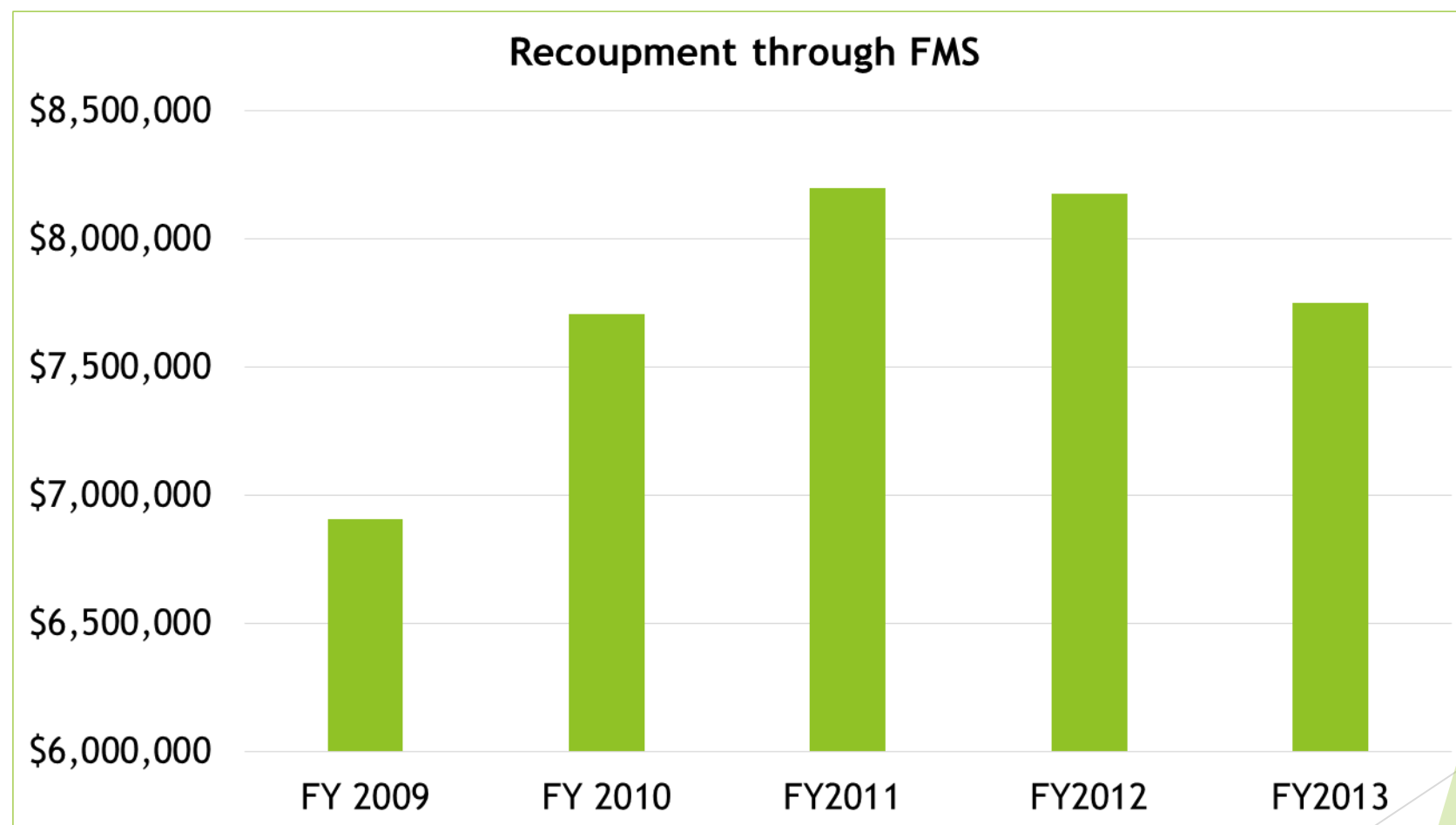
- Attorneys Fees Collected Through Clerks
  - *\$6.3 Million*
- Appointment Fees (\$60) Collected Through Clerks
  - *\$1.4 Million*
- Attorneys Fees Collected Through Set Off Debt (Dept of Revenue and Lottery)
  - *\$4.7 Million*
- Appointment Fees Collected Through Set Off Debt
  - *\$0.5 Million*



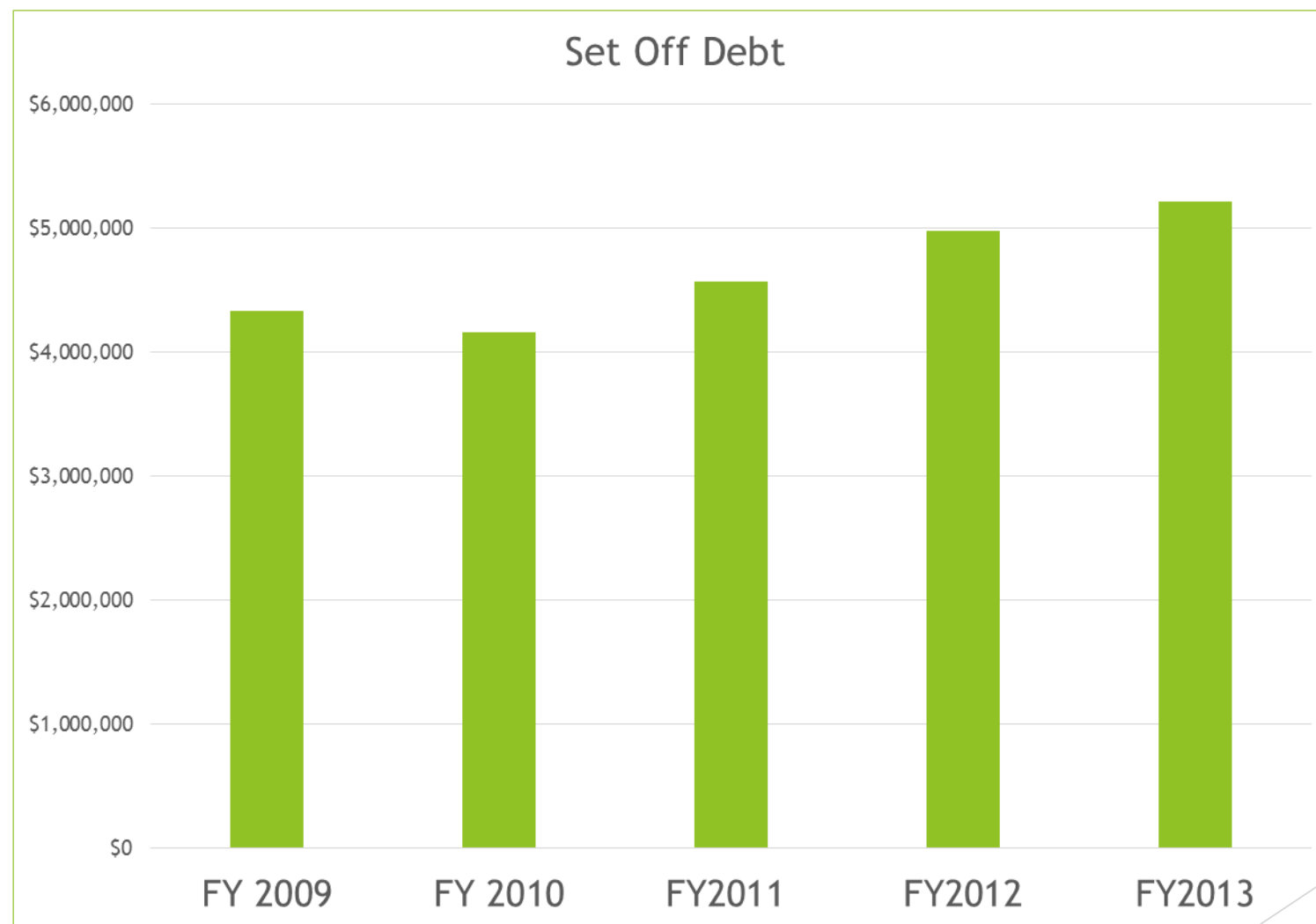
# When Does Recoupment Happen?

- At disposition, along with other fees and court costs (unsupervised probation)
- During probation, along with other fees and court costs
- In response to civil judgment
  - intercepted tax returns or lottery winnings
  - clearing liens for property transfers, settling estates

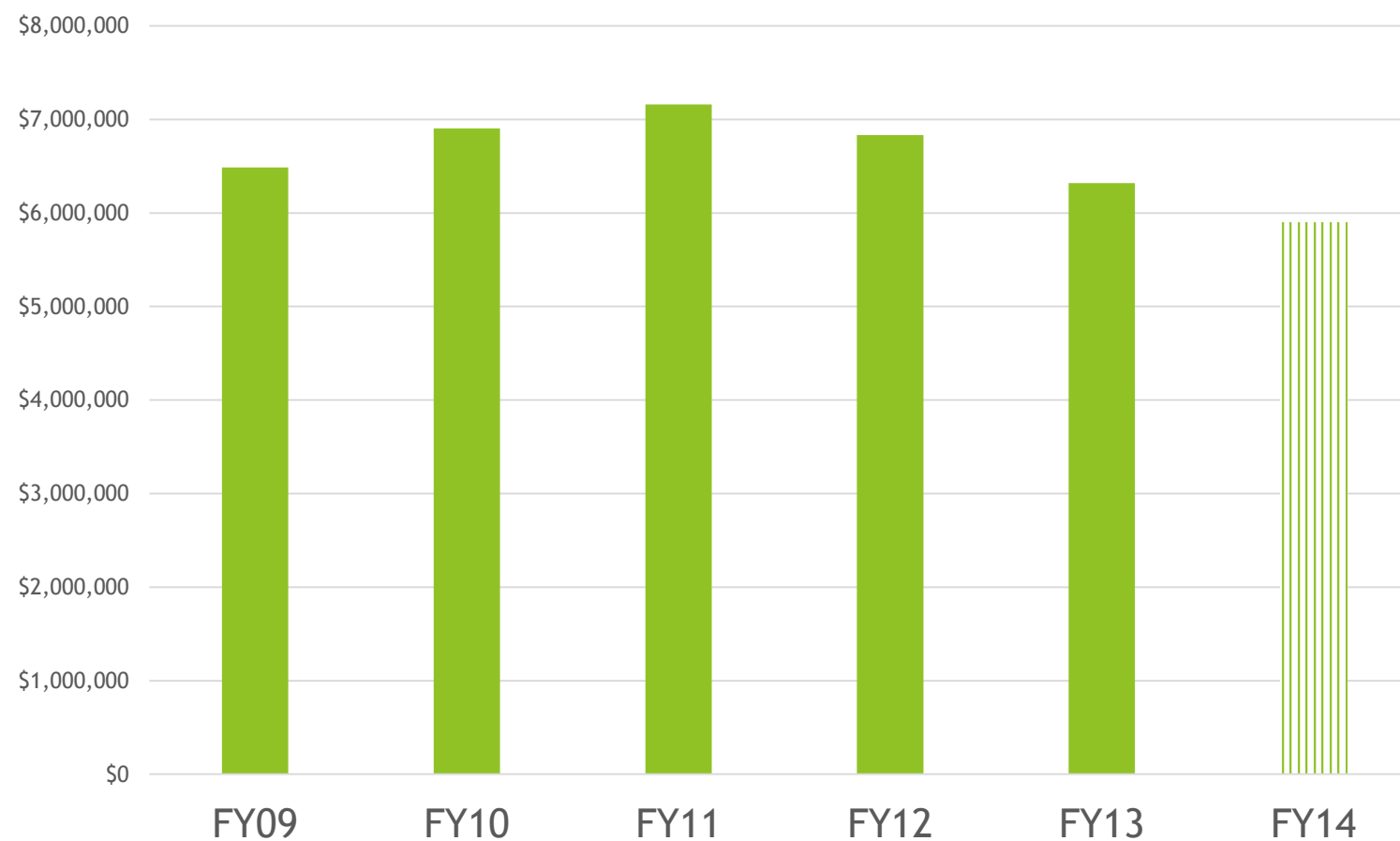
# Trends in Recoupment Through Clerks



# Trends in Recoupment Through Set Off Debt



# Trend in Attorney Fees Collected Through Clerks



# Factors Affecting Recoupment

- Amount paid to attorneys
  - Attorney fees and recoupment rose and fell with hourly rate changes
- Disposition of case—65%-70% of criminal cases eligible for recoupment because of conviction
- Submission of paperwork for recoupment by attorneys to the court
- Processing of monies owed and judgments by Clerks
- Whether clients have funds to pay or are receiving tax refund
  - Assume recoupment more frequent in lower level cases

# Obstacles to Recoupment

- Attorneys fees lowest priority on statutory list of fees
- Difficulty of follow up on unsupervised probation cases
- If some fees paid during probation, Clerks office needs to coordinate between cashier and civil to enter judgment on balance
- If attorney payment not affected, less incentive for proper paperwork (PD and contractors)

# Obstacles continued

- System is complex—how to handle appeals, deferrals, interims, withdrawals/retained, attorney for day systems
- Missing social security numbers
- Workload and turn over in Clerks offices
- Increases in other financial obligations for defendants

# Recoupment Rate

Measured as amount collected as a percentage of non capital spending (PAC and Public Defender Programs) in that same year

<u>Year</u>		<u>Recoup %</u>	<u>Effective Rate</u>	
FY2009		11.4%	17.8%	
FY2010		11.7%	18.3%	
FY2011		12.0%	18.7%	
FY2012		13.7%	21.4%	
FY2013		13.2%	18.9%	



# Variation in Recoupment Rates

- ▶ Vary widely by county—3.7% to 44.3% in FY13
- ▶ Urban counties lower rate—Ten largest counties recouped 6.8%; other 90 recouped 26.9%
- ▶ Percentages deceptive in smallest counties
- ▶ Combination of attorney, Judge, and Clerks roles as well as demographics

# Strategies for Improvement

- Review Clerks' files to identify defender programs or contractors not submitting recoupment forms
- Dialogue with Clerks & Judges in districts with lower recoupment
- Assist AOC in trainings Clerks' staff
- More attention to obtaining social security number at each step (affidavit, fee application)

# Ideas for New Approaches

- Rather than base recoupment on specific fee applications, have set schedule of recoupment obligations by type of case
  - would require statutory changes
  - greater uniformity across type of attorney
  - more routine for Clerks' staff
  - less fair because not tied to actual time on case
- Staff in Clerks' offices dedicated to recoupment
  - Part-time staff in Mecklenburg TCA funded by recoupment revenues

# Data Used Now

- ▶ Receive daily deposits through FMS system—total attorney fees and appointment fees by county
- ▶ Review totals collected by county each month  
*if county reports improbable amount,  
follow-up with AOC FMA Staff*
- ▶ Review lists of judgments docketed without tax ID numbers so staff can try to fill in
- ▶ FMA or Internal Auditors inquiry on specific cases

# New Data Possibilities

- ▶ Reviewing Affidavits of Indigency and whether recoupment occurred
- ▶ Sampling files to track recoupment
  - Reviewing Clerks' files time intensive
- ▶ Reviewing FMS data by case number
  - Voluminous data, complicated by partial pay
  - Would need to match with ACIS data for case info